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Cultures of Ownership in the Western
Landscape*

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Editor's Note

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Editor's Note

EDITORS' NOTE

In the dry theoretical discourse of the typical law school property class, parcels are named "Blackacre" and individuals are named "A" and "B." Not surprisingly, the classroom discussion does not address how the beliefs and experience of "A" and "B" inform their relationship to the land they own, lease, live upon, and use. Property rights and culture are intimately connected, however. Each individual views the landscape through a distinct cultural lens. For those groups and individuals who have developed a long-term relationship with the landscape, the land becomes an integral part of the culture.

The vast and diverse landscape of the American West lends itself to an array of cultural perspectives. For American Indians, certain locations within the landscape are places of creation and sacred power. For members of the Church of Jesus Christ of Latter-Day Saints—Mormons—certain locations are places for reflection on important events in the church's history. For farmers and ranchers, certain locations are the source of the family's welfare and independence. For conservationists, certain locations are precious enclaves that must be preserved within an increasingly urbanized west. For natural resource developers, certain locations are both an answer to the nation's energy woes and an opportunity for economic reward. When these locations and cultural perspectives overlap, conflict frequently results.

The *Denver University Law Review* and the University of Denver Native American Law Students Association (NALSA) teamed up to bring individuals with these different perspectives into dialogue with one another. The Symposium, entitled "Borrowing the Land: Cultures of Ownership in the Western Landscape," was held on February 17, 2006 at the University of Denver Sturm College of Law. Although the weather outside was unusually frigid that day, the discussions inside were warm and stimulating. The event drew more than 100 attendees from Arizona, California, Colorado, New Mexico, Utah, and Wyoming. The articles in this volume emerged from the Symposium.

Professor Charles Wilkinson, one of the event's two keynote speakers, begins this issue of our Law Review with an overview of the diverse and changing views of the western landscape. The event's other keynote speaker, Professor Rebecca Tsosie, then introduces a central issue in the Symposium: sacred sites protection. Specifically, Professor Tsosie suggests the possibility of intercultural understanding with respect to sacred sites. Next, Professor Kristen Carpenter describes the current legal framework governing American Indian sacred sites claims on public lands and suggests new directions for scholarship and advocacy. Professor Kevin Holdsworth addresses historical and constitutional issues re-

lated to Martin's Cove, a location considered sacred by Mormon Church members. William Perry Pendley, in contrast to Professors Carpenter and Tsosie, argues against the protection of American Indian sacred sites on Establishment Clause grounds.

The two articles that follow explore the intersection of conservation and culture. Professor Federico Cheever describes how the West was carved up by successive governmental policies, and holds out the land trust community as a possible "agent of positive change" to "reorder the jumble of property rights" that currently exists in the western landscape. Lawrence Kueter and Christopher Jensen take a practical approach by addressing the legal and tax consequences of utilizing conservation easements to protect cultural resources.

Next, Curtis Berkey explores how the trust doctrine might function as a needed source of substantive law for tribes in Indian environmental cases. In the issue's final article, Keith Bauerle describes how the private surface/federal subsurface split estate in the Powder River Basin of northeastern Wyoming and southeastern Montana has led to an alliance between the "old and new west interests."

The 2006 Symposium would not have happened without the inspiration and assistance of Professors Carpenter and Cheever, who initially suggested the conference theme. We acknowledge and appreciate their support of our Law Review. Amy Bowers, NALSA president, was instrumental in contacting participants and organizing the event. Sarah Benjes and Lynda Atkins, Editor-in-Chief and Managing Editor, respectively, of Volume 84 of the Law Review, provided invaluable assistance in the preparation of this issue. We wish them and the entire staff of Volume 84 the best of luck in 2006-2007.

Christian Aggeler
Symposium Editor

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